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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,506	07/27/2003	Robert Michael Franz	1109.03001	1505
24254	7590	04/07/2005	EXAMINER:	
ROGER A JACKSON, ESQ			NGUYEN, CHI Q	
800 PENNSYLVANIA				
SUITE 1504			ART UNIT	PAPER NUMBER
DENVER, CO 80203-3185			3635	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,506	<b>Applicant(s)</b> FRANZ, ROBERT MICHAEL
	<b>Examiner</b> Chi Q Nguyen	<b>Art Unit</b> 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 July 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) 41 and 42 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-40 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 July 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_ .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121.

I. Claims 1-40, drawn to a structural brace apparatus, classified in class 403, subclass 403.

II. Claims 41-42, drawn to a method of installing a structural brace apparatus, classified in class 52, subclass 741.1.

The inventions I and II are related as process of making and product made. The inventions are distinct if either of the following can be shown:

(1) that the process as claimed can be used to make other and materially different product or

(2) that the product as claimed can be made by another and materially different process.

For instant case, the apparatus claims could be made by a method different than that group I such as using cable tie to ground anchor.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

A telephone call was made to request an oral election on 3/23/2005, the election was made to group I without traverse by Mr. Jackson Roger.

### ***Specification***

The disclosure is objected to because of the following informalities: The applicant is advised to have the texts for disclosure in normal font size and unbolded.

Appropriate correction is required.

### ***Claim Objections***

Claims 1-40 are objected to because of the following informalities: the applicant is advised to have the texts for claims in normal font size and unbolded. Appropriate correction is required.

Claims 16 and 39 are objected to because of the following informalities: the applicant is advised to remove extra phrase "to the".

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard independent claims 1 and 18, the preambles are set forth a structural brace apparatus, and the depend claims 16, 17, 39 and 40 cited as "wherein said first support arm is secured to the primary building", "wherein said second support arm is secured to the secondary building", respectively. The claimed language is unclear and inconsistent. At the present, the examiner treats the claims as subcombination to a structural brace, and the building structures are not positively claimed.

In regard claim 9 recites the limitation "wherein said intermediate angle is about 45-degree" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In regard claim 10 the limitation cited "a base attachment member" is the same as limitation cited in claim 6? Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood, claims 1-8, 16-31, 34-35, and 37-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Frobosilo (US 6,213,679).

In regard claims 1, 16-19, 39, 40, Frobosilo teaches a device comprising a first support arm 90 having a longitudinal axis, said first support arm extending from, a second support arm 12 having a slidable engagement with the first support arm 90 (fig. 6). And the device is made from steel material (col. 4, line 20). Since Frobosilo teaches the similar structures as the applicant's claimed invention, therefore it inherently capable performed the similar functions.

In regard claim 2, Frobosilo teaches the claimed invention as stated wherein said slidable engagement further comprises a retainer 98/100 to prevent said first support arm and said second support arm from axially disengaging from one another in at least one direction along the longitudinal axis.

In regard claims 3, 4, 26, 27 Frobosilo teaches the claimed invention as stated wherein further comprising a base attachment member 20 adjacent to the second support arm opposite of the slidable engagement.

In regard claims 5, 28, 34, 35, Frobosilo teaches the claimed invention as stated wherein said base attachment member 20 is integral and affixed to the second support arm.

In regard claims 6, 29 Frobosilo teaches the claimed invention as stated wherein further comprising a pair of base attachment members 94/96 adjacent to each of the first support arm opposite of the slidable engagement and the second support arm opposite of the slidable engagement.

In regard claims 7, 30, 31, 37, 38, Frobosilo teaches the claimed invention as stated wherein the pair base attachment members 94/96 are integral and affixed to the first and second support arms when they engaged together (fig. 6).

In regard claim 8, Frobosilo teaches the claimed invention as stated wherein said pair base attachment members 94/96 are integral to said first and second support arm when they're engaged to each other (fig. 6).

In regard claims 20, 22, 24, 25, Frobosilo teaches the claimed invention as stated wherein the slidable engagement is constructed of a plurality of inwardly extending fingers 98/100 such that at least one finger extends from the first support arm first edge margin and slidably engages said second support arm and the third and fourth edge margins.

In regard claims 21, 23, Frobosilo teaches the claimed invention as stated wherein the plurality of fingers 98/100 contact from the first support arm and second support arm such that a retainer is created to prevent disengaging from one another (fig. 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

As best understood, claims 9-15, 32-33, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frobosilo.

In regard claims 9-15, 32-33, and 36, Frobosilo teaches the claimed invention as stated except for a base attachment member oriented at about 45-degree extended from the longitudinal axis adjacent to either of the first support arm opposite of the slidable engagement or the second support arm opposite of the slidable engagement. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a base attachment member oriented at about 45-degree, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. The motivation for doing so would have been to provide a better engagement between the first and second support arms for reinforcing members at the same angle, etc. 45-degree.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Siilats, Duff, Weiss, Marousek, Yang, Boozer, Quillin, and diGirolamo teach reinforcing members.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

4/1/05  
CQN

  
Naoko Slack  
Primary Examiner